

EXHIBIT N



**Michael A. Tocicki, C.P.A.
Executive General Adjuster**

January 31, 2010

Professional Indemnity Agency, Inc.
37 Radio Circle Drive
P. O. Box 5000
Mount Kisco, New York 10549

Attention: Albert Van Wagenen
Senior Vice President

| | | | |
|------------|----------------------|----------|---|
| RE: | Insured | : | The Wormick Company and Its subsidiaries |
| | | | |
| | Type of Loss | : | Accidental Product Contamination |
| | | | |
| | Date of Loss | : | June 24, 2009 (record purposes only) |
| | | | |
| | Your Ref. | : | 08APC/06/09/06 |
| | | | |
| | Our Reference | : | 10-01-1221 |

Dear Mr. Van Wagenen:

Having completed preliminary inquiries in respect of the captioned claim, we attach our Report Number 1 for Underwriters' consideration.

Yours faithfully,
PREMIER INSURANCE SERVICES

Michael Tocicki
Executive General Adjuster

Ryan M. Tocicki

Enclosure: Report Number 1

P R E M I E R I N S U R A N C E S E R V I C E S L L C

130 Church Street # 205
New York, NY 10007

88 Tulip Road
Southampton, PA 18966

Tel 267-377-7112
Fax 619-639-1115

EMail ADJUST3MT@AOL.COM
RMTOCICKI@YAHOO.COM



January 31, 2010

Interested HCC Underwriters
c/o Professional Indemnity Agency, Inc.

Attention: Albert Van Wagenen
Senior Vice President

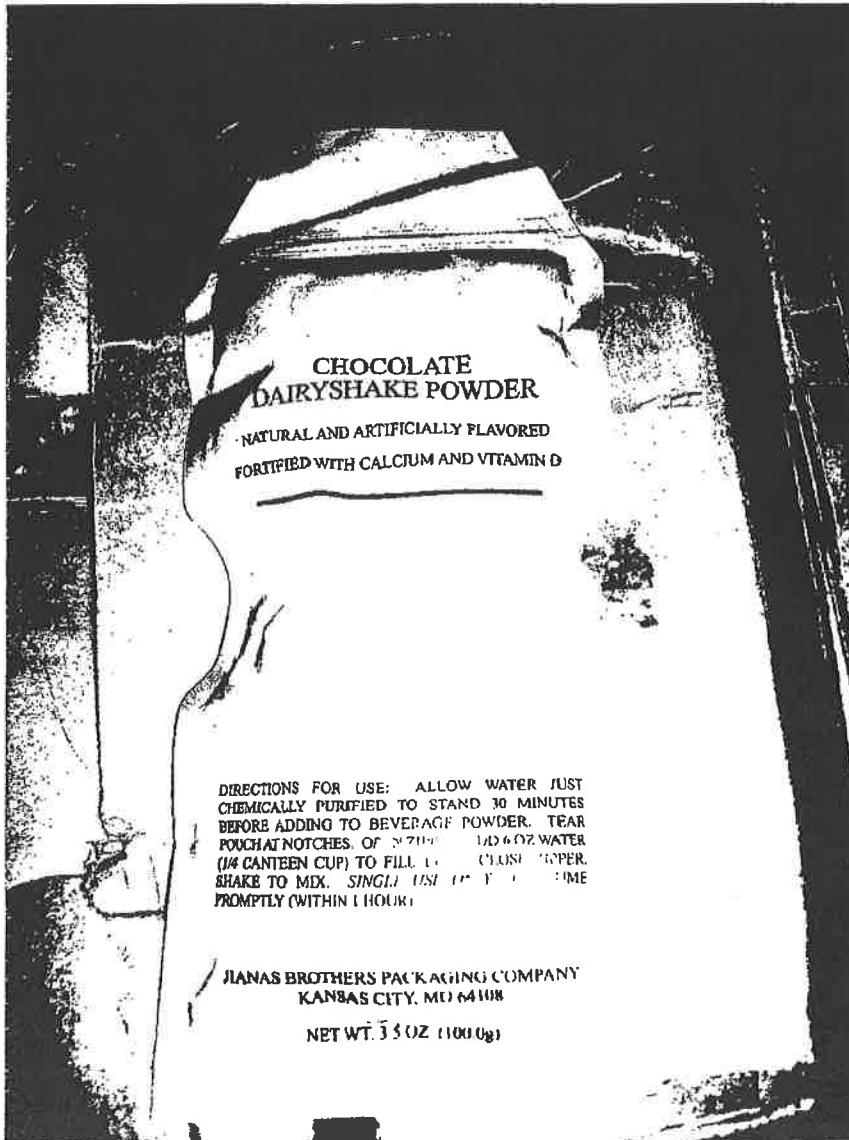
Adjuster's Report No. 1 - For the Consideration of Legal Advisors-Privileged

REPORT NO. 1

| | | |
|---------------------------|---|---|
| Your Ref. | : | 08APC/0609/06 |
| Our Ref. | : | 10-01-1221 |
| Insured | : | The Wornick Company and Its subsidiaries 4700 Creek Road Suite 200 Cincinnati, OH 45242 |
| Coverage | : | Accidental Product Contamination |
| Policy No. | : | H708-80173 |
| Policy Period | : | 12 months commencing July 10, 2008 |
| Limit of Liability | : | \$1,000,000 i.r.o. Accidental Product Contamination |
| Deductible | : | \$500,000 each and every loss |
| Type of Loss | : | Accidental Product Contamination |
| Date of Loss | : | June 24, 2009 (record purposes only) |
| Suggested Reserve | : | up to \$1,000,000 (pending Underwriter's coverage evaluation) |



The Insured has submitted a claim under the referenced policy following a recall by a supplier of the possibility of *salmonella* bacteria in the Insured's dairyshake powder packets which the Insured sell as a component of a military ready-to-eat meal (MRE) sold to the U.S. Government. Below is a representative sample of the packet:





The Insured was advised of the potential contamination by the USFDA and a supplier (Trans-Packers) who manufacture the packets for the Insured. There are two primary manufacturers of these dairyshake packets:

- Trans-Packers
- Jianas Brothers

The raw material in the packets was recalled by the milk-powder manufacturer (Plainview Milk Products) who announced a product recall in June, 2009 due to the discovery of **salmonella in the manufacturing equipment** used to produce the milk powder (see various bulletins and press releases, below).

Initially the Insured expected that their supplier would accept responsibility for the potentially contaminated product and/or they could convince their customer (US military) that the product was safe and did not need to be recalled.

However, Trans-Packers have not compensated the Insured and the Insured has commenced litigation against Trans-Packers. Further, as *salmonella* is a potentially harmful bacterium, the Insured has been advised by their customer (US military) that they would like the Insured to recall and replace the "contaminated" product with new product.

We have conducted preliminary inquiries into the captioned claim and attach our Report No. 1 for Underwriter's consideration.



COVERAGE:

Coverage is claimed under HCC Accidental Product Contamination Policy No. H709-80163 written in the name of **The Wornick Company and its subsidiaries** and is effective for a period of 12 months commencing 10 July 2008.

The Policy limit of liability in respect of Accidental Product Contamination is \$1,000,000 subject to a deductible of \$500,000 each and every loss.

The policy indemnifies the named insured for loss resulting directly from an Accidental Product Contamination first discovered by the named insured during the certificate period. Loss shall include:

1. Cost of contaminated products
2. Recall expenses
3. Rehabilitation expenses
4. Crisis response expenses
5. Loss of gross profits

The policy defines **Accidental Product Contamination** to mean:

1. *"Any accidental or unintentional contamination, impairment or mislabeling during the manufacturing, blending, mixing, compounding, packaging, labeling, preparation, production or processing of the named insured's products, or PUBLICITY implying such"*

Or,

2. *"Fault in design specification or performance of the named insured's products."*



Provided always that the consumption or use of the named insured's contaminated products has, within one hundred twenty days of such consumption or use, either resulted, or may likely result, in physical symptoms of bodily injury, sickness, disease or death of any person and/or physical damage to tangible property including animals and/or livestock."

Also, the policy contains PUBLICITY coverage.

The policy defines Publicity to mean:

"The reporting of an actual or alleged accidental product contamination during the certificate period in local, regional, or national media (including but not limited to radio, television, newspapers, magazines or the internet) or any governmental publication where the Named Insured's product and the Named Insured are specifically named."

We located a U.S. Government web site (DSCP – which is part of the United States Department of Defense) that specifically discusses the recall process and names the Insured and the Insured's product:



Operational Rations, Dairyshake Powder, Recall Information Page

Updated 9/30/09

Background

Plainview Milk Products Cooperative (MPC), Plainview, MN. voluntarily issued a recall of instant non-fat dried milk (NFDM) products produced between June 2007 and June 2009 made on equipment found to



contain Salmonella during an FDA investigation of the facility. NFDM from Plainview MPC was used to produce some lots of "**Dairyshake**" Powder, Fortified with Calcium and Vitamin D" that were assembled in some lots of **MRE**, UGR-E, and **TOTEM rations**. Following consultation with the FDA and confirming operational rations Dairyshakes were affected by the Plainview MPC recall, DSCP issued ALFOODACT 130-2009 to ensure no Dairyshakes would be consumed pending specific lot identification. Due to the extensive nature of **potential adulteration**, worldwide distribution, and war fighters' immediate need for operational rations, DSCP issued ALFOODACT 131-2009 with a single date of pack (DOP)/lot number cutoff for MRE and UGR-E rations. DSCP, in conjunction with the DoD Veterinary Service Agency/Office of the Surgeon General, determined the Plainview MPC NFDM recall be expanded to include **all MRE Dairyshakes assembled from 1 January 2006 to 30 June 2009 to ensure the safety of war fighters around the world**. Testing and quality control protocols are stringent for operational ration components and there are no known incidents of illness from consuming the operational ration Dairyshake Powder. However, the intermittent nature of potential adulteration makes it prudent to expand the recall period and provide our war fighters and other customers with only safe and wholesome products. DSCP will rework MRE under DLA control; reworked lots will maintain the original DOP/lot number; reworked lots will have an "R" placed on the case following the original DOP/lot number. DSCP issued ALFOODACT 139-2009 to provide an operational ration Dairyshake status update and information about this website.

About This Website

DSCP has determined the assembler date of pack (DOP)/lot numbers listed on this site are NOT AFFECTED by the **Dairyshake** do not consume order. The database lists MRE assemblers alphabetically with those assemblers DOP/lot numbers (a Julian date) listed numerically. DSCP is providing this information to assist customers in determining if MRE stocks on hand are affected by the Dairyshake "Do Not Consume Order" or are safe to consume. Shipments from DLA depots that have been cleared should arrive with placards on each pallet. MRE with DOP/lot number 9140 and higher do not contain affected Dairyshake Powders and will not be listed. As DSCP issues reworked lots, the original lot code will be followed by an "R" to read "XXXX R" (See Photo).

How to Use This Website



1. Determine the MRE assembler: Ameriqual, SOPACKO, or **Wornick**. (See photos)
2. Determine the date of pack (DOP)/lot number. The lot number represents the Julian date the MRE was packed. (See photos)
3. If MREs on hand match BOTH the assembler and DOP/lot number the Dairyshake is safe to consume and you may print a placard to mark that specific lot.
4. Click the "print placard" link for your specific lot; recommend you set your printer to print "landscape".
5. The placard will print with the specific assembler's name and DOP/lot number you selected.
6. Attach the placard to the MRE pallet/case that matches BOTH the assembler's name and DOP/lot number.

Site Entry Notification

1. If an MRE assembler's DOP/lot number IS NOT listed AND the MRE lot number is 9139 or earlier, the "DO NOT CONSUME ODER" remains applicable-do not consume the Dairyshake.
2. This web site is dynamic, as unaffected assembler lots are identified they will be posted.
3. The printable placards are assembler DOP/lot number specific; do not use for any other assemblers or any other DOP/lot number.
4. MRE lots reworked to remove affected Dairyshakes will have an "R" following the original lot number (See Photo). Reworked lot numbers will not be listed on this site.
5. Shipments from DLA depots that have been cleared should arrive with placards on each pallet.
6. MRE with DOP/lot number 9140 and later do not contain affected Dairyshake Powders and will not be listed on this site.

I understand the above SITE ENTRY NOTIFICATION

Acknowledge





The policy defines the Insured's product to mean:

PRODUCT(S): *All food products (finished or in process), including all ingredients or All, manufactured and which are distributed, handled by the Named Insured (or manufactured by a contract manufacturer for the Named Insured) and which are (or will be) available for sale by the Named Insured.*

The policy covers **rehabilitation expenses**, which are "*reasonable expenses to restore the Contaminated Products to merchantable quality*"

The policy has a **sublimit for rehabilitation of expenses totaling \$250,000**. As the dairyshake packet which is the subject of this contamination claim and related recall is a small component of a "meal kit" sold by the Insured containing multiple food items, many of the potential claim costs could involve rehabilitation of the product (labor and materials involved in: retrieving the kit, opening the kit, removing the milk shake packets, replacing the dairyshake packet with a replacement, re-closing the kit or replacing the packaging).

The Insured has indicated that they expect the total cost of the replacement of the dairy shake packets to approach \$1,500,000.

Therefore, if coverage is agreed by Underwriters, we must closely study the nature and detail of the costs to identify which of the claimed costs should be considered "rehabilitation expenses" as opposed to "recall expenses". A legal opinion may be necessary at some time if there is a disagreement as to which costs are subject to being classified as "rehabilitation expenses" (and therefore subject to a \$250,000 sublimit).

The Insured has also advised (see further discussion below) that they are objecting to certain assumptions made by the United States military and may be litigating the claim with the United States military.



Therefore, based on preliminary inquiries, it is possible that an Accidental Product Contamination, as defined, has occurred.

INSURED:



The Wornick Company and its subsidiaries supply individual and group military field rations (MREs, Meals, Ready-to-Eat) to the department of defense in the United States. The company produces, packages, and distributes extended shelf-life, shelf-stable, and frozen foods in pouches and semirigid containers.

The MRE is a self-contained operational ration consisting of a food entree packed in a flexible pouch, other shelf stable food components, and an accessory packet (matches, toilet paper, gum, hot sauce, coffee, etc.).

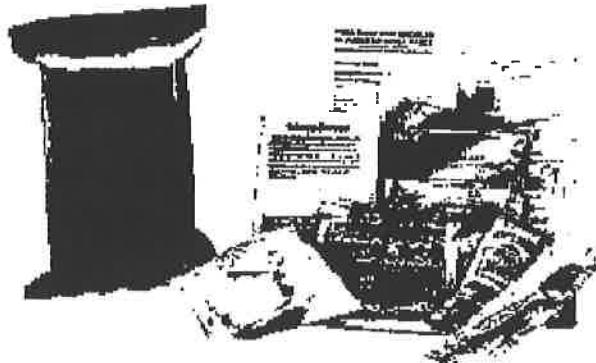
The company was formerly known as Right Away Foods Corporation and changed its name to The Wornick Company in 1981. The Wornick Company is based in Cincinnati, Ohio.

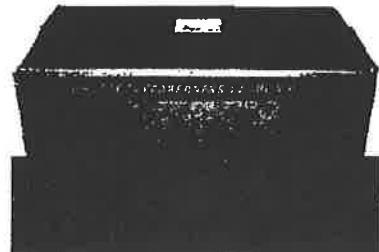


CIRCUMSTANCES OF LOSS:

The Insured manufacture and sell numerous military ready-to-eat meals (MRE) and "survival" kits which are sold through camping and survival/disaster preparation stores throughout the United States.

Below are samples of the types of meal kits which are sold by the Assured.





During June 2009, the Insured became aware of a potential claim when Plainview Milk products announced a recall of their milk powder product due to potential salmonella contamination. The Insured was aware that the dairy shake packet which is a component in one of their meal kits which is sold to the U.S. military contained milk powder from Plainview Milk. The dairy shake packets were manufactured by a subcontractor (Trans-Packers Services Corp.) who purchases the milk powder from Plainview Milk Products.



The Insured notified Underwriters of a potential claim and shortly thereafter a press release was published by Trans-Packers in conjunction with the United States Food and Drug Administration.

Trans-Packers Services Corp. Recalls Dairy Shake Blends Because of Possible Health Risk

Company Contact:

Trans-Packers Services Corp.
718-963-0900

FOR IMMEDIATE RELEASE – July 7, 2009 – Trans-Packers Services Corp. of Brooklyn, NY, is recalling approximately 6,300 packets (net wt. 100 g) of Dairy Shake blends because such blends contain instant non-fat dry milk manufactured by the Plainview Milk Products Cooperative. Plainview has recently commenced a voluntary recall of instant non-fat dry milk and other ingredients that have the potential to be contaminated with *Salmonella* bacteria.

Salmonella is an organism which can cause serious and sometimes fatal infections in young children, frail or elderly people, and others with weakened immune systems. Healthy persons infected with *Salmonella* often experience fever, diarrhea (which may be bloody), nausea, vomiting and abdominal pain. In rare circumstances, infection with *Salmonella* can result in the organism getting into the bloodstream and producing more severe illnesses such as arterial infections (i.e., infected aneurysms), endocarditis and arthritis.

Trans-Packers have not received any reports of illness related to the Dairy Shake blend. The product affected by this recall includes single-serve packets of Dairy Shake blend packaged in a preformed barrier pouch, which were distributed through Emergency Essentials, Inc. and Saratoga Trading Company located in Orem, Bluffdale and Saratoga Springs, Utah.

The particular blends and affected lot numbers are:

- * 6,000 packets of Strawberry/Banana Flavor Dairy Shake lot # 8324,
- * 200 packets of Vanilla Flavor Dairy Shake lot # 9132 and
- * 100 packets of Strawberry Dairy Shake lot # 7225.

Consumers who have any of the Dairy Shake blends from the affected lot numbers should not consume the product; and are urged to destroy such product.



Consumers with questions may contact Trans-Packers at 1-718-963-0900 Monday through Friday from 8:00 a.m. to 4:00 p.m. Eastern time.

For more information on *Salmonella*, please visit the Centers for Disease Control and Prevention's website at <http://www.cdc.gov>.

Recall Expanded on July 13, 2009

Once this recall was announced, the U.S. Government (DSCP) determined that they had purchased hundreds of thousands of cases of MRE's from The Worknick Company and these MRE's contain the dairyshake packets manufactured by Trans-Packers. DSCP advised the Insured that they required the Insured remove the "contaminated" dairyshake packets from the meal kits (*to include all MRE Dairyshakes assembled from 1 January 2006 to 30 June 2009 to ensure the safety of war fighters around the world*) and insert replacement ("new") product in the kits.

The Insured determined that they had purchased and sold hundreds of thousands of dairyshake packets from Trans-Packers during the three previous years and that those dairyshake packets had been included in military ready-to-eat meals sold to the United States Government (military).

It had taken the U.S. military numerous months to begin researching their inventory and location records of these various meal kits. Many of the meals kits were likely consumed, some may be at military bases worldwide and others may be on military war ships and/or submarines throughout the world.



CLAIM:

The Insured has stated that approximately 500,000 MRE's contain their allegedly contaminated milkshake packets and that the US government has requested that Assured replace the "contaminated" dairy shake packets with replacement product.

Preliminary estimates for the cost of transportation of the MRE's to and from Wornick's premises, replacement product cost and labor costs total **\$1,500,000** (which is subject to change).

INVESTIGATION OF CIRCUMSTANCES & VERIFICATION OF CLAIM:

We have reviewed correspondence wherein the Insured claims that they were advised by their supplier of a recall due to likely salmonella contamination in their dairyshake packets which are included in a variety of ready-to-eat meal (MRE) kits sold to the U.S. Military.

Salmonella is a potentially fatal bacterium. According to the Center for Disease Control:

Salmonellosis

Center for Disease Control and Prevention

Salmonellosis is an infection with bacteria called *Salmonella*. Most persons infected with *Salmonella* develop diarrhea, fever, and abdominal cramps 12 to 72 hours after infection. The illness usually lasts 4 to 7 days, and most persons recover without treatment. However, in some persons, the diarrhea may be so severe that the patient needs to be hospitalized. In these patients, the *Salmonella* infection may spread from the intestines to the blood stream, and then to other body sites and can cause death unless the person is treated promptly with antibiotics. The elderly, infants, and those with impaired immune systems are more likely to have a severe illness.



Persons with diarrhea usually recover completely, although it may be several months before their bowel habits are entirely normal. A small number of persons with *Salmonella* develop pain in their joints, irritation of the eyes, and painful urination. This is called Reiter's syndrome. It can last for months or years, and can lead to chronic arthritis which is difficult to treat. Antibiotic treatment does not make a difference in whether or not the person develops arthritis.

Every year, approximately 40,000 cases of salmonellosis are reported in the United States. Because many milder cases are not diagnosed or reported, the actual number of infections may be thirty or more times greater. Salmonellosis is more common in the summer.

We have discussed the source of the contaminated milk shake packets with the Insured. It appears there are two suppliers/contractors who are likely responsible for this loss, including:

- Plainview (the manufacturer of the "contaminated" non-fat dry milk used in the packets)
- Trans-Packers Services (packer of the individual dairyshake packets) who sold the packets to Wornick

The origin of the contaminated milk-powder is Plainview Milk Cooperative who announced a FDA Class 1 recall on June 28, 2009:

FDA NEWS RELEASE

For Immediate Release: June 28, 2009

Media Inquiries: Stephanie Kwisnek, 301-796-4737, Stephanie.Kwisnek@fda.hhs.gov
Consumer Inquiries: 888-INFO-FDA



Company Recalls Various Products Due to Potential Salmonella Contamination

FDA, USDA, CDC investigating; no link to human illnesses at this time

Plainview Milk Products Cooperative, Plainview, Minn., is voluntarily recalling instant nonfat dried milk, whey protein, fruit stabilizers, and gums (thickening agents) that it has manufactured over the past two years, because they might be contaminated with Salmonella. The company sells these products to other industry customers, including distributors and manufacturers, who may have incorporated them into their own products. None of Plainview's products were sold directly to the public.

Plainview has stopped production of these products and has notified its customers of the recall. Currently, the Plainview recall is limited to industry customers who received suspect product.

This is an ongoing investigation, and the FDA will update the public as new information emerges. At this time, the FDA is not aware of products being recalled at the consumer level.

"This recall is an appropriate precaution to protect public health," said David W.K. Acheson, M.D., associate commissioner for foods in the Food and Drug Administration. "It reflects the concerted efforts of numerous partners at the local, state, and federal levels."

During an investigation of the Plainview facility, FDA found that some of the equipment was contaminated with Salmonella. At this time, the Centers for Disease Control and Prevention have not linked any human illnesses to potentially contaminated products from the Plainview facility.

The FDA became aware of this problem through the U. S. Department of Agriculture. USDA found Salmonella in Dairyshake powder, in 100-gram pouches that were not for retail sale. The FDA began an investigation as to the source of the contamination. In the course of that investigation, Plainview Milk Products was identified as a supplier of a key ingredient in the Dairyshake powder. Inspection of the firm uncovered conditions that resulted in the broader recall.

The FDA is conducting this investigation in collaboration with USDA, CDC, the Minnesota Department of Agriculture, and state and local health departments.

FDA investigators are working to track the distribution of the Plainview ingredients to identify additional products that contain the recalled ingredients.



Salmonella is an organism that can cause serious and sometimes fatal infections in young children, frail or elderly people, and others with weak immune systems. Healthy people infected with Salmonella often experience fever, diarrhea (which may be bloody), nausea, vomiting, and abdominal pain. Most healthy people recover from Salmonella infections without treatment. In rare circumstances, infection with Salmonella can result in the organism getting into the bloodstream and producing more severe illnesses, such as arterial infections (infected aneurysms), infection of the lining of the heart, and arthritis.

#

[RSS Feed for FDA News Releases](#) [what is RSS?]

The FDA links the Plainview recall to Trans-Packers milk shake packets (which were sold to Wornick):

- [FDA Home](#)
- [Plainview Milk Cooperative Ingredient Recall Product List](#)

Trans-Packers Services Corp. Recalls Dairy Shake Blends Because of Possible Health Risk

Company Contact:

Trans-Packers Services Corp.
718-963-0900

FOR IMMEDIATE RELEASE – July 7, 2009 – Trans-Packers Services Corp. of Brooklyn, NY, is recalling approximately 6,300 packets (net wt. 100 g) of Dairy Shake blends because such blends contain instant non-fat dry milk manufactured by the Plainview Milk Products Cooperative. Plainview has recently commenced a voluntary recall of instant non-fat dry milk and other ingredients that have the potential to be contaminated with *Salmonella* bacteria.

Salmonella is an organism which can cause serious and sometimes fatal infections in young children, frail or elderly people, and others with weakened immune systems. Healthy persons infected with *Salmonella* often experience fever, diarrhea (which may be bloody), nausea, vomiting and abdominal pain. In rare circumstances, infection with *Salmonella* can result in the organism getting into the bloodstream and producing more severe illnesses such as arterial infections (i.e., infected aneurysms), endocarditis and arthritis.

Trans-Packers have not received any reports of illness related to the Dairy Shake blend. The product affected by this recall includes single-serve packets of Dairy Shake blend.



packaged in a preformed barrier pouch, which were distributed through Emergency Essentials, Inc. and Saratoga Trading Company located in Orem, Bluffdale and Saratoga Springs, Utah.

The particular blends and affected lot numbers are:

- * 6,000 packets of Strawberry/Banana Flavor Dairy Shake lot # 8324,
- * 200 packets of Vanilla Flavor Dairy Shake lot # 9132 and
- * 100 packets of Strawberry Dairy Shake lot # 7225.

Consumers who have any of the Dairy Shake blends from the affected lot numbers should not consume the product; and are urged to destroy such product.

Consumers with questions may contact Trans-Packers at 1-718-963-0900 Monday through Friday from 8:00 a.m. to 4:00 p.m. Eastern time.

For more information on *Salmonella*, please visit the Centers for Disease Control and Prevention's website at <http://www.cdc.gov>.

###

Recall Expanded on July 13, 2009

As noted above Trans-Packers announced their first recall of the contaminated product in conjunction with the US FDA on July 7, 2009 as follows.

Trans-Packers

Information current as of noon July 17, 2009

272 entries in list

[Plainview Milk Cooperative Ingredient Recall: Main Page](#)

Note: This list includes products subject to recall in the United States since June 2009 related to product manufactured by Plainview Milk Products Cooperative. This list will be updated as new information is received. The information is current as of the date indicated. Once included, all recalls will remain listed. If we learn that any information is not accurate, we will revise the list as soon as possible. When available, this database also includes photos of recalled products that have been voluntarily submitted by recalling firms to the FDA to assist the public in identifying those products that are subject to recall.

Category: **Drink Mix**

Brand Name: **Trans-Packers**

Product Description: **Chocolate Flavor Dairy Shake**



Recalling Firm: Trans-Packers Services Corp.

Size:

Lot Numbers: Lot num: 8297 and 8318

Stock Numbers:

Product Code:

Label: <http://www.fda.gov/Safety/Recalls/ucm172284.htm>

We have contacted the Insured's management to review the loss circumstances. They have advised that the United States military has requested that The Wornick Company replace the "contaminated" dairy shake packets in approximately 500,000 MREs at a cost estimated at \$1,500,000. This includes the cost of materials, transportation and labor to retrieve the meal kits, remove the existing dairyshake packets, insert replacement product and return the kits to the military.

While only certain lot numbers are listed by Trans-Packers, the U.S. military is requiring replacement of all lots for a 3.5 year period from January 2006 through June 2009.

The Wornick Company has advised the following:

1. They have filed a lawsuit against Trans Packers (<http://cincinnati.bizjournals.com/cincinnati/stories/2009/12/21/daily42.html>)

2. They are challenging the U.S. Government demand to replace the dairyshake packets. Wornick recently advised that:

We are currently working with Dinsmore and Shohl, our attorney to file a claim with the US Government. We are working on exactly how to file, as we have a few different avenues. We are working cautiously as they are our largest customer, but we are in no ways releasing the US Government from their obligations. The main defense that we have is that the AVI, the US Government regulatory agency that does checks and



verifications on the production process, performed significant checks for *Salmonella* during the normal production process and found no contamination. Even though the USDA/FDA found the potential for contamination at Plainview, where the product was originally manufactured, we read the contract with the US Government to clearly state that a recall is a reason for non-compliance, unless higher/further testing protocols are called for under the contract, which the Dairy Shake was definitely subject to additional and more stringent testing protocols, in our manufacturing process, than that used by the USDA/FDA at Plainview. The US Government is reading one clause and ignoring a second clause. Our stance is that the contract must be read in its entirety, not piecemeal

Below is a sample of a FDA test report on the Insured's dairyshake packets showing NO SALMONELLAE:

| | |
|---|----------------------|
| Food and Drug Administration Office of Regulatory Affairs | |
| Summary Report | |
| For Sample Number: 542504 | |
| FD Sample Number | Import Sample Number |
| This is an accurate transcription of the original electronic record. 07/27/2009 | |

Sample Class: Normal Everyday Sample Sample Origin: Domestic Sample Basis: Surveillance
 Sample Flag: Sample Type: Investigational Collecting District: MIN-DO
 Home District: Orig C/R and Records To: MIN-DO Collection PACs: 03803D

Product Name: Dried Milk, Non Fat; Plastic, Synt; Packaged Pood (Not Commercially Sterile)

Product Description: Spray Process Grade A Nonfat Dry Milk Made From Pasteurized Milk

Collection Reason: Sample was collected per CFSAN Inspection Request. It began on 6/9/09. Please analyze for *Salmonella*.

| Lab: DEN- District LAB Conclusion: | Split Num 0 Disposition Reason: | Date Received: 06/11/2009 District Conclusion Made By: | Date Out of Lab: 06/22/2009 District | |
|--|---------------------------------------|--|---|-------------------|
| Performing Org PAC LID PAF | | Compliance No | Lab Class-Description | Laboratory Status |
| DEN-LAB-T | 03803D | MIC | In Compliance | Completed |

Lab Conclusion

No *Salmonella* was detected in one, 15 sub, composite analyzed.

Lab Conclusion Date Lab Conclusion Made By

06/22/2009 Miller,Zachary A



SUBROGATION:

As detailed above, it appears there are two parties/suppliers who are likely responsible for and could compensate the Insured for their losses related to this incident. We have asked the Insured to place all responsible parties on Notice. The Insured filed a lawsuit against their direct supplier, Trans-Packers as Trans-Packers did not respond to the Insured's demand for compensation.

REMARKS AND RECOMMENDATIONS:

Based upon preliminary inquiries it appears possible that an Accidental Product Contamination, as defined, has occurred (due to the policy Publicity clause). However, third parties appear responsible and could compensate the Insured for their losses.

As noted above, some of the costs involved in the replacement of product totaling \$1,500,000 could be considered "rehabilitation expenses" which are sublimated under the policy to \$250,000.

We will need to study the details of those expenses and access which costs are recall costs and which costs are "rehabilitation expenses".

The Assured has also advised that they are challenging the requirement from the U.S. Military to fund the recall and replacement of the dairyshake product claiming the Government tested a cleared the product and the Dairy Shake was definitely subject to additional and more stringent testing protocols.

Underwriters may wish to obtain a legal analysis on whether the Insured should attempt to reject the government demands to absorb the cost to replace the product.



The Insured has stated that they expect the losses to exceed \$1,500,000, we suggest Underwriters consider establishing a loss reserve of up to \$1,000,000 for this claim. However, the net claim is subject to various uncertainties, including:

1. Is this a covered loss (based on the Publicity provision)?
2. How much of the loss is limited by the \$250,000 sublimit for rehabilitation expenses?
3. What will be the disposition of the lawsuit against Trans-Packers?
4. Is the Insured legally/contractually responsible to absorb the costs of replacing the product?

We await Underwriters' preliminary comments.

We will forward an additional report shortly.

Yours faithfully,
Premier Insurance Services

Michael Tocicki
Executive General Adjuster

Ryan M. Tocicki